

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LOCALS 302 AND 612 OF THE  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
CONSTRUCTION INDUSTRY HEALTH  
AND SECURITY FUND, *et al.*,

Plaintiffs,

v.

FARGO ELECTRICAL INC., a  
Washington profit corporation, UBI No.  
604 568 927, Contractor License No.  
FARGOEI804DZ,

Defendant.

Case No. 2:22-cv-653-RAJ

**ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFFS' MOTION**

**I. INTRODUCTION**

This matter comes before the Court on Plaintiffs' motion to authorize issuance of subpoena pursuant to RCW 50.13.070. Dkt. # 10. The Court **GRANTS** in part and **DENIES** in part the motion for the reasons stated herein.

**II. BACKGROUND**

This action is for employee fringe benefit contributions due on behalf of employees working for Fargo Electrical Inc. ("Fargo"). Plaintiffs, Locals 302 and 612 of the International Union of Operating Engineers Construction Industry Health and Security

1 Fund; Locals 302 and 612 of the International Union of Operating Engineers-Employers  
2 Construction Industry Retirement Fund; and Western Washington Operating Engineers-  
3 Employers Training Trust Fund (hereinafter referred to as the “Plaintiff Trusts”), operate  
4 as Trust Funds to provide retirement, health, and training benefits to eligible members,  
5 retirees, and their beneficiaries. Dkt. # 1, ¶ 1.1. The master labor agreement between the  
6 unions and Fargo require employers to make benefit contributions on behalf of its  
7 employees for all covered hours worked to the Plaintiff Trusts and binds Fargo to the terms  
8 of the respective Trust Agreements for the Plaintiff Trusts. *Id.*, ¶ 3.2.

9 The Trust Agreements require Fargo to submit reports of hours worked and  
10 payment of contributions at the rates required under the Labor Agreement to the Plaintiff  
11 Trusts on or before the 15th day of the month following the month in which hours were  
12 worked. *Id.*, ¶ 3.3. Failure to make timely remittance results in an assessment of  
13 delinquency charges in the form of liquidated damages and interest as stipulated in the  
14 respective Trust Agreements. *Id.* The Trust Agreements also stipulate that Plaintiff Trusts  
15 are entitled to assess and recover all costs of collection including administrative costs,  
16 attorneys’ fees and costs, and service fees, from a delinquent employer. *Id.* Plaintiff Trusts  
17 allege that Fargo has failed to submit the required remittance reports and payment of fringe  
18 benefit contributions. *Id.*, ¶ 3.7.

### 19 III. DISCUSSION

20 The Washington statute, RCW 50.13.070, requires specific findings to be included  
21 in a subpoena directed to the Employment Security Department for production of  
22 confidential unemployment compensation records. The statute provides as follows:

23 Information or records deemed private and confidential under this  
24 chapter shall be available to parties to judicial or formal administrative  
25 proceedings only upon a finding by the presiding officer that the need for the  
26 information or records in the proceeding outweighs any reasons for the  
27 privacy and confidentiality of the information or records. Information or  
28 records deemed private and confidential under this chapter shall not be  
available in discovery proceedings unless the court in which the action has

1 been filed has made the finding specified above. A judicial or administrative  
2 subpoena directed to the employment security department must contain this  
3 finding. A subpoena for records or information held by the department may  
4 be directed to and served upon any employee of the department, but the  
5 department may specify by rule which employee shall produce the records  
6 or information in compliance with the subpoena.

7 RCW 50.13.070.

8 The Plaintiff Trusts rely on self-reporting by employers to determine the amount of  
9 fringe benefit contributions due on behalf of employees pursuant to the Trust Agreements  
10 and the relevant Collective Bargaining Agreements. *See generally* Dkt. # 1. Plaintiff Trusts  
11 indicate they have made repeated requests to Fargo to provide records and that Fargo has  
12 failed to do so. Dkt. # 11 at 2. They claim that the only other way to determine the amount  
13 of contributions due the Trust Funds is by examining the employer's payroll records,  
14 including state taxing information such as the quarterly reports submitted to the State of  
15 Washington Employment Security Department. *Id.* at 3.

16 In this case, Plaintiff Trusts have shown that the need for the records in this  
17 proceeding outweighs any need for privacy and confidentiality of the records in question.  
18 The records are necessary for further prosecution of this action. Without the personnel  
19 records, Plaintiff Trusts cannot determine the contributions owed. However, the requests  
20 seeks records for *all* employees of Fargo, not just covered under the master labor  
21 agreement. Plaintiff Trusts have not shown why their requests cannot be tailored to only  
22 covered employees. Accordingly, the Court limits the subpoena to employees covered  
23 under the master labor agreement. As for confidentiality concerns, Plaintiff Trusts maintain  
24 that the information will not be disclosed outside of the present litigation and will be  
25 maintained confidentially. *Id.* at 3. Nonetheless, in granting in part the request for  
26 discovery, the Court will order the Plaintiff Trusts to submit a protective order governing  
27 the use of any employment payroll records obtained for purposes of prosecuting this action.

#### 28 IV. CONCLUSION

Accordingly, **IT IS HEREBY ORDERED:**

1           1. Plaintiffs' Motion for Order Finding Discovery of ESD Documents  
2     Appropriate, **ECF No. 10**, is **GRANTED in part and DENIED in part**.

3           2. The Court finds that the need for the information and records in the current  
4     proceedings outweighs any further privacy and confidentiality concerns. *See* Wash. Rev.  
5     Code § 50.13.070. ESD shall produce: all personnel records of Fargo Electrical Inc. in the  
6     possession of the Washington State Employment Security Department for employees  
7     covered under the Master Labor Agreement for March 2021 through present.

8           3. Plaintiffs' Trusts are ordered to submit a protective order governing the use of  
9     any employment payroll records obtained for purposes of prosecuting this action.

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11           DATED this 5th day of April, 2023.

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14           The Honorable Richard A. Jones  
15           United States District Judge